

ADRIAN OVERTON

IBLA 76-631

Decided February 18, 1977

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer W 54117.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases:
Lands Subject to--Oil and Gas Leases: Noncompetitive Leases

Where the Bureau of Land Management has determined that lands listed under the simultaneous oil and gas leasing system should not have been listed solely because the lands lie within "a critical watershed which is to be the subject of an Environmental Impact Statement," the first-drawn offer will not be rejected but may remain in suspended state until completion of the EIS and determination at that time whether the lands may be leased subject to stipulations for protection of the watershed.

APPEARANCES: Gerald E. Nielson, Esq., Yano & Nielson, Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Adrian Overton has appealed from the decision of the Wyoming State Office, Bureau of Land Management, dated April 29, 1976, rejecting his simultaneous oil and gas lease offer W 54117 which was drawn with first priority for Parcel No. 141 in the January 1976 Wyoming simultaneous listing. The State Office rejected the offer on the ground that the parcel had been erroneously listed,

in that the report of the District Manager had stated "Hold Off Leasing: these lands fall within the Red Creek Basin, a critical watershed which is the subject of an EIS [Environmental Impact Statement] this coming year."

Appellant contends that rejection of the offer is essentially unfair, and moreover argues that the decision should be set aside for failure by BLM to supply a substantive reason for its rejection. Appellant mistakes the thrust of the State Office decision. The reason stated, that is the land was listed in error, is a substantive reason.

The listing of lands as available for simultaneous oil and gas lease offers does not constitute a determination that such lands will, in fact, be leased. Rather, it merely indicates that BLM will accept offers to lease the land subject to a subsequent determination of whether a lease should be granted. See Stanley Ustan, 13 IBLA 89 (1973). Nevertheless, when, in its simultaneous filing procedures, BLM has solicited oil and gas lease offers for a parcel of land not otherwise withdrawn from leasing, and thereafter called upon the successful drawee for submission of the annual rental payment, subsequent rejection of all offers should not be lightly made. See Milan S. Papulak, 24 IBLA 278 (1976); Chevron Oil Company, 24 IBLA 159 (1976).

In the present case, there are no reasons apparent in the record for failure to issue an oil and gas lease for the subject offer except the desire of a District Manager to make an environmental impact statement prior to lease issuance. This is not a reason to compel mandatory rejection of the lease offer within the ambit of 43 CFR 2091.1. Cf. Paula J. Jones, 24 IBLA 76 (1976).

Appellant has stated that in the event the State Office decision cannot be overturned and a lease issued to him at this time, he would welcome a recognition of his continuing status as the first qualified offeror for the tract in issue, subject to reasonable stipulations resulting from the proposed environmental impact statement. An analogous situation was treated by this Board in Justheim Petroleum Company, 18 IBLA 423 (1975), which directed suspension of a lease offer until a conflicting state selection application was finally resolved. See also Jones, supra.

Therefore, the decision of the State Office to reject this offer will be set aside and the case remanded to permit the State Office to make the proposed environmental impact statement and thereafter to examine the possibility of leasing the parcel at issue with or without special protective stipulations.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded to the Wyoming State Office, Bureau of Land Management, to be held suspended until completion of the indicated environmental impact statement and determination at that time whether or not to issue an oil and gas lease for this parcel, and if so, under what condition.

Douglas E. Henriques
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Martin Ritvo
Administrative Judge

